

DOCKET NO.: X03-HHD-CV11-6032094-S : SUPERIOR COURT
 JAMES J. DESALLE, ET AL. : COMPLEX LITIGATION DOCKET
 v. : JUDICIAL DISTRICT OF HARTFORD
 WAL-MART STORES EAST, LP, ET AL. : September 23, 2016

ORDER RE: UNITY OF INTEREST AMONG PLAINTIFFS

Before the Court are the parties' competing motions regarding whether there is a unity of interest among the plaintiffs.¹ The plaintiffs move for a finding that there is no unity of interest among certain of them and that, therefore, pursuant to General Statutes §§ 51-241 and 51-243(a) and Practice Book § 16-5, they should be afforded additional sets of peremptory challenges (#405.00 at 4). The plaintiffs argue, in the alternative, that even if the Court finds a unity of interest among the plaintiffs, it should nonetheless be liberal in awarding additional peremptory challenges. Defendant Wal-Mart Stores East, LP (Wal-Mart) moves for a finding under § 51-241 that there is a unity of interest among the plaintiffs. (#433.00.) Oral argument took place on September 14, 2016. Jury selection is scheduled to commence on November 29, 2016.

For the reasons stated below, the Court concludes as a matter of law that there is a unity of interest among the plaintiffs under §§ 51-241 and 51-243(a). In its discretion, however, the Court will allow the plaintiffs six peremptory challenges and Wal-Mart six peremptory challenges.

I

This case arises from a motor vehicle accident that took place on February 22, 2009 on

¹ Although the plaintiffs raised this request in their trial management report dated August 22, 2016 (#405.00 at 3-5), the plaintiffs requested in a September 7, 2016 status conference that the Court take up the issue in a future motions hearing. Accordingly, the Court treats the plaintiffs' request as a motion for a finding of no unity of interest.

the interstate highway, I-95, in Florida. It is alleged that plaintiff Juveniano Videira was operating a 1998 Plymouth Voyager minivan, in which the other six plaintiffs were passengers, when the left rear tire, a Cooper Mastercraft Sensys 01 tire (Cooper tire), allegedly failed when the tread separated from the tire. The vehicle overturned, and plaintiffs Maria Videira and James DeSalle were allegedly ejected from the vehicle. The parties dispute whether these passengers were wearing their seatbelts. All of the plaintiffs allege physical injuries. Mr. DeSalle allegedly sustained injuries rendering him a paraplegic, and Ms. Videira is alleged to have sustained significant physical injuries.

On February 13, 2009, plaintiff Eleanor Videira allegedly purchased a Douglas X-Trac II tire from a Wal-Mart tire service location. Although Wal-Mart did not sell the Cooper tire to the plaintiffs, the plaintiffs allege that Wal-Mart should have recommended that the Cooper tire be replaced.

All of the plaintiffs are represented by the Faxon Law Group LLC. The plaintiffs have not filed any cross-claims or apportionment complaints against one another.

II

In their trial management report, the plaintiffs argue that they should have five sets of peremptory challenges (#405.00 at 4). In essence, the plaintiffs contend that: (1) plaintiffs Eleanor Videira and Juveniano Videira should each be afforded one set of peremptory challenges because they lack unity of interest with the other plaintiffs by virtue of Wal-Mart's assertion of apportionment claims against them; (2) plaintiffs James DeSalle and Maria Videira should each have a set of peremptory challenges because they lack unity of interest with the other plaintiffs to the extent Wal-Mart is permitted to argue that they were negligent in not wearing seatbelts (an assertion they dispute); and (3) the remaining three plaintiffs should have one set of challenges,

for a total of five sets of peremptory challenges (i.e., 20 challenges) among all plaintiffs.²

During oral argument, plaintiffs' counsel modified the request, stating that plaintiffs would be satisfied with two peremptory challenges for every one challenge given to Wal-Mart.

III

The question of whether there is a unity of interest among the plaintiffs presents a threshold question of statutory interpretation.

When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply.... In seeking to determine the meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.... When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter

(Citation omitted; internal quotation marks omitted.) *State v. Courchesne*, 296 Conn. 622, 668–69 (2010).

IV

A

The parties' motions are governed by General Statutes §§ 51-241 and 51-243. *See also* Practice Book § 16-5. Section § 51-241 provides:

On the trial of any civil action to a jury, each party may challenge peremptorily three jurors. Where the court determines a unity of interest exists, several plaintiffs or several defendants may be considered as a single party for the purpose of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. For the purposes of this section, a “unity

² The plaintiffs' alternative argument — that the Court should grant them at least the number of peremptory challenges granted to the defendants cumulatively (#405.00 at 4) — has, of course, been rendered moot by the fact that Wal-Mart is the only remaining defendant.

of interest” means that the interests of the several plaintiffs or of the several defendants are substantially similar. A unity of interest shall be found to exist among parties who are represented by the same attorney or law firm. In addition, there shall be a presumption that a unity of interest exists among parties where no cross claims or apportionment complaints have been filed against one another. In all civil actions, the total number of peremptory challenges allowed to the plaintiff or plaintiffs shall not exceed twice the number of peremptory challenges allowed to the defendant or defendants, and the total number of peremptory challenges allowed to the defendant or defendants shall not exceed twice the number of peremptory challenges allowed to the plaintiff or plaintiffs.

Similarly, § 51-243(a), which applies to cases in which the court directs the selection of alternate jurors, contains the identical unity of interest provisions set forth in § 51-241. Moreover, Practice Book § 16-5, the rule of practice applicable to peremptory challenges, contains nearly identical unity of interest language.

The Court considers as its starting point the following provision set forth in § 51-241: “A unity of interest shall be found to exist among parties who are represented by the same attorney or law firm.”³ Section 51-243(a) contains the identical provision. Because this provision does not make clear whether its use of the term “shall” is directory or mandatory, *see, e.g., State v. Banks*, 321 Conn. 821 (2016), the Court considers the provision ambiguous regarding whether the trial court enjoys any discretion in determining whether a unity of interest exists among parties who are represented by the same attorney or law firm.

Accordingly, pursuant to § 1-2z, in order to resolve the ambiguity, the Court has reviewed the legislative history underlying P.A. 01-152, which, among other things, amended §§ 51-241 and 51-243 to add the same attorney or law provision. In short, the legislative history makes clear that the same attorney or law firm provision is mandatory and leaves the trial court with no discretion regarding finding a unity of interest among parties who are represented by the same attorney or law firm. In fact, the *only* statements made in the legislative history of P.A. 01-

³ For ease of reference, the Court will refer to this provision as the “same attorney or law firm provision.”

152 concerning the same attorney or law provision emphasize its mandatory nature. *See, e.g.*, 44 Sen. Proc., Pt. 11, p. 3364, remarks of Senator Eric D. Coleman (“This bill specifically provides that a unity of interest between defendants or plaintiffs would be found if the defendants or plaintiffs share the same attorney or same law firm.”); *see also* 44 H.R. Proc., Pt. 16, 2001 Sess., pp. 5171-72, remarks of Representative Michael P. Lawlor (“the language included in the amendment is mandatory where the parties are represented by the same attorney or same law firm”); *id.*, p. 5175 (“it’s in effect mandatory that a judge would not have the discretion not to find a unity of interest if the parties are represented by the same attorney”); *id.*, p. 5176 (“it would be mandatory”); *id.*, p. 5182 (“not a presumption...it’s a mandate”).

To the extent the plaintiffs rely on *Pirreca v. Koltchine*, No. CV09-5025754-S, 2012 WL 5278700, at *2 (Conn. Super. Oct. 12, 2012) (*Lager, J.*), for their proposition that a unity of interest does not exist among them, their reliance is misplaced. In *Pirreca*, the trial court concluded that there *was* a unity of interest between those defendants who were represented by the same counsel.

Based on the foregoing analysis, the Court concludes as a matter of law that, because all plaintiffs are represented by the same law firm, there exists a unity of interest among the plaintiffs pursuant to §§ 51-241 and 51-243(a).

B

The plaintiffs go on to argue that, even if the Court concludes that a unity of interest exists among the plaintiffs, it should nonetheless award additional peremptory challenges in its discretion. (#405.00 at 5.) In response, Wal-Mart urges the Court to reject such an effort, but maintains that it should be given an equal number of challenges as the plaintiffs.


The Court notes the following language, shown in emphasis, from §§ 51-241 and 51-

243(a): “Where the court determines a unity of interest exists, several plaintiffs or several defendants may be considered as a single party for the purpose of making challenges, *or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.*” Moreover, in *Kalams v. Giacchetto*, 268 Conn. 244, 262-64 (2004), our Supreme Court clarified that there may be circumstances when a trial court may grant additional peremptory challenges not required by law. *See also Carrano v. Yale-New Haven Hospital*, 279 Conn. 622, 633-35 (2006).

Here, the Court considers this case to present such a circumstance. Jury selection is currently scheduled to commence on November 29, 2016 and is expected to take approximately two weeks. Evidence is scheduled to start on January 10, 2017, and is expected to require approximately four weeks. Because of the extended length of trial and the break (spanning the holidays) between jury selection and the start of evidence, and in the interest of promoting an efficient and orderly jury selection process, the Court exercises its discretion and allows the plaintiffs six peremptory challenges and Wal-Mart six peremptory challenges, with the goal of selecting six regular jurors and three alternate jurors.

V

Based on the foregoing, the Court grants in part and denies in part the plaintiffs’ motion regarding peremptory challenges (*see* #405.00) and grants in part and denies in part Wal-Mart’s motion in limine re: unity of interest (#433.00).

 9/23/2016

Ingrid L. Moll
Judge, Superior Court